



MANATEE COUNTY
FLORIDA

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BOARD RECORDS

January 18, 2011

Sean S. Whaley
Mackey Law Group, P.A.
1402 3rd Avenue West
Bradenton, Florida 34205

Re: VA-10-02 / EXECUTIVE VIEW, INC. LOTS 13 HARBOUR LANDINGS DTS 20100075

Dear Mr. Whaley:

Enclosed is the Final Order issued by Hearing Officer H. Hamilton Rice, Jr. on behalf of Manatee County for the above mentioned Special Permit.

In order for this Special Permit to be effective, it must be recorded with the Clerk of the Circuit Court of Manatee County. There is a recording fee of \$10.00/1st page and \$8.50/page thereafter. To do this, please contact Mrs. Susan Romine, Deputy Clerk, Board Records Department at 1010 Manatee Avenue West, Bradenton, or call 748-4501, ext. 4180.

If we may be of further assistance, please let us know.

Sincerely,

Bobbi Roy
Planning Coordinator

Planning Department
Mailing Address: P. O. Box 1000 * Street Address: 1112 Manatee Avenue West, 4th Floor, Bradenton, FL 34206-1000
PHONE: 941.749.3070 * FAX: 941.749.3071
www.myanatee.org

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VA-10-02

Executive View, Inc. Lot 13 Harbour Landings DTS#20100075

/br

Enclosure

cc: Hearing Officer H. Hamilton Rice, Jr.
Sarah Schenk/CAO
Bill Clague / CAO
Barney Salmon, Planner
Robert Schmitt, AICP, Planning Services Manager
Board Records
Case File

FILED FOR RECORD
R. B. SHORE

2011 JAN 18 AM 11:30

VARIANCE NO. VA-10-02
EXECUTIVE VIEW, INC. LOTS 13 HARBOUR LANDINGS
DTS 20100075

CLERK OF DISTRICT COURT
MANATEE CO FLORIDA

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER H. HAMILTON RICE, JR. ON BEHALF OF MANATEE COUNTY GRANTING A VARIANCE NO. VA-10-02 TO ALLOW AN EXISTING POOL SCREEN CAGE TO REMAIN 3.2 FEET FROM THE REQUIRED 5 FOOT SIDE YARD SETBACK FOR AN EXISTING ACCESSORY STRUCTURE TO A SINGLE-FAMILY HOME IN HARBOUR LANDINGS SUBDIVISION ZONED PDR/CH (PLANNED DEVELOPMENT RESIDENTIAL/COASTAL HIGH HAZARD OVERLAY); LOCATED AT 12622 SAFE HARBOUR DRIVE, BRADENTON; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE (0.266 ± acres).

WHEREAS, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code, Manatee County Ordinance 90-01, as amended; and

WHEREAS, pursuant to the Land Development Code, Manatee County Ordinance 90-01, as amended, the Hearing Officer has the authority to grant Variances; and

WHEREAS, Executive View, Inc. requested a Variance to allow an existing pool screen cage to remain 3.2 feet from the required 5 foot side yard setback for an existing accessory structure to a single-family home in Harbour Landings Subdivision in the PDR/CH (Planned Development Residential/Coastal High Hazard Overlay) zoning district; and

WHEREAS, on January 12, 2011, the aforementioned Hearing Officer held a public hearing to receive the staff, applicant, and public comment, and argument regarding the proposed Variance to allow an existing pool screen cage to remain 3.2 feet from the required 5 foot side yard setback for an existing accessory structure to a single-family home in Harbour Landings Subdivision.

NOW, THEREFORE, after consideration of the application for Variance No. 10-02 requested by Executive Homes, Inc. the Hearing Officer makes the following Findings of Fact and Conclusions of Law and issues the Final Order as follows:

Section 1. Findings of Fact. The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation and staff report presented, as well as all other matters presented at the Public Hearing above referenced, hereby makes the following Findings of Fact:

- A. The application is for a Variance to allow a 1.8 foot encroachment into the side yard setback for reduction of the required 5 foot side yard setback to 3.2 feet for the pool deck and screened cage as set forth in Section 703.2.24.1 of the Land Development Code.
- B. The Variance requested is permitted under the standards of Land Development Code Section 509.2.b. *required yards, buffers, or setbacks*, and 509.2.e. *errors of encroachment*.
- C. The review criteria set forth in Section 509.6 of the Land Development Code must be met for a Variance to be granted.
- D. The applicant did not meet all the standards for review of Section 509.6 of the Land Development Code for the following reasons:
 - 1) The physical surroundings, shape, topographical condition, physical or environmental condition of the specific property involved does not result in a particular hardship upon the owner, as distinguished from a mere inconvenience. There are corner lots within Harbour Landings that have swimming pools. The shape and physical condition of the rear yards does not result in a hardship nor an inconvenience. The building permit shows the pool within the proper setback. The pool and screening received a C.O. in 2009 by affidavit.
 - 2) The condition upon which the request for a Variance is based is not unique to the parcel and would be applicable, generally, to other property in the vicinity. Again, there are other corner lots that have pools that meet the required setback standards within Harbour Landings.
 - 3) The Variance is based on conditions, including financial, occupational, or ability, which are personal to the applicant as applied to the property involved in the application. Removal of all or a portion of the pool and pool cage will create a financial burden on the property owner who is seeking this Variance.
 - 4) The alleged hardship has not been created by any person presently having an interest in the property but was created as a result of a bona fide error. The error was created by the pool contractor. The pool was shown correctly on the building permit but inadvertently constructed within a portion of the 5' side yard setbacks.
 - 5) The granting of the Variance will not be detrimental to the public welfare or injurious to other property or improvements in the vicinity.

- 6) The proposed Variance will not increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the vicinity.
- 7) The Variance granted is not the minimum Variance that will make possible the reasonable use of the property. A reasonable use of the property is not determined by granting of this variance and the property can still be used for a single family residence and pool.
- 8) The encroached yard on the property can be put to a reasonable use which complies fully with the requirements of the Code without the Granting of the Variance to allow a pool and screened cage within the 5 foot side yard setback.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, and a review of the applicable provisions of the Manatee County Comprehensive Plan and Manatee County Land Development Code, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to the Land Development Code.
- B. The applicant has the burden of proving entitlement to the Variance, *Gomez V. City of St. Petersburg*, 550 50 2d 7(Fla 2nd DCA 1989).
- C. The variance is the not the type prohibited by Section 509.3 *Additional Prohibitions*, of the Land Development Code.
- C. The variance does not meet all of the criteria set forth in Section 509.6 *Standards of Review and Approval*, of the Land Development Code.
- D. The applicant not met its burden of proof by competent evidence and is entitled to the Variance.

Section 3. Order. Based upon the foregoing, the Variance is hereby approved for the property at 1262 Safe Harbour Drive, Cortez Florida and more particularly described in Exhibit "A" attached hereto and incorporated herein, for a Variance to allow a pool deck and screened cage to encroach approximately 1.8 feet into a 5 foot side yard setback (LDC Section 703.2.24.1) subject to the following conditions:

1. This Variance shall not be effective until it has been recorded in the Public Records of Manatee County, Florida by the applicant and a copy of the recorded Order is received by the Planning Department.

2. The site plan submitted with this application shall be part of this approval, but only approved at the preliminary level. Administrative approval of the Final Site Plan shall be required subsequent to the Hearing Officer's approval of the Variance.

Section 4. Severability. In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decisions shall in no manner affect the remaining portions or sections of the Variance which shall remain in full force and effect.

Section 5. Effective Date. The effective date of this Variance shall be upon execution of this Order and its recordation in the Official Records by the applicant with the Office of the Clerk of the Circuit Court and receipt of a copy of the recorded Order by the Planning Department.

ORDERED ON BEHALF OF MANATEE COUNTY this 12th day of January, 2011.

MANATEE COUNTY, FLORIDA

BY: H. A. A. [Signature]
Hearing Officer for Manatee County

ATTEST: R. B. Shore,
Clerk of the Circuit Court

BY: [Signature] E. Vollmer
Deputy Clerk

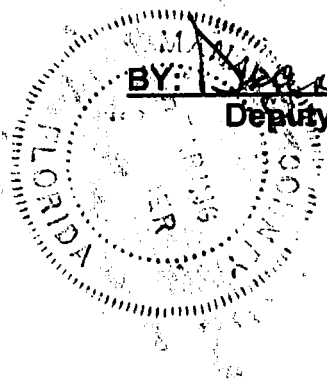


EXHIBIT "A"

Lot 13, Harbour Landings, as per plat thereof, recorded in Plat Book 37, Page 108, Public Records of Manatee County, Florida.